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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 SHON OLIVENTA WILLIAMS,

12 Plaintiff,

13 v.

14 L. BIRD, et al.,

15 Defendants.
16

No. 2:21-cv-00657-CKD P

ORDER

17 Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. §
18 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. §
19 636(b)(1).

20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a
21 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted.
22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§
23 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the
24 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court.
25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding
26 month's income credited to plaintiff's prison trust account. These payments will be forwarded by
27 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

II. Allegations in the Complaint

At all times relevant to the allegations in the complaint, plaintiff was an inmate at Deuel Vocational Institution. Plaintiff seeks a recall of his criminal sentence and monetary

1 compensation for correctional officers who engaged in misconduct by playing dominoes instead
2 of supervising inmates. Plaintiff names four separate defendants in this action: the Warden at
3 Deuel Vocational Institution, the Secretary of the CDCR, an “Exceptional Conduct
4 Recommender” at the CDCR, and unnamed correctional staff assigned to “1170(d)(1) review.”¹
5 ECF No. 1 at 2. Plaintiff specifically alleges that defendants’ failure to award him exceptional
6 conduct credit pursuant to California Penal Code § 1170(d)(1) constitutes a due process and equal
7 protection violation. In a separate cause of action, plaintiff seeks “to be treated as if” he “has
8 never written any 602 Inmate Appeals by ‘the Gains Family.’” ECF No. 1 at 5.

9 III. Legal Standards

10 The following legal standards are being provided to plaintiff based on his pro se status as
11 well as the nature of the allegations in his complaint.

12 While not entirely clear, it appears that plaintiff is seeking his release from prison in this
13 civil rights action. When a state prisoner challenges the legality of his custody and the relief he
14 seeks is the determination of his entitlement to an earlier or immediate release, his sole federal
15 remedy is a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S.
16 475, 500 (1973). Also, to the extent plaintiff seeks damages, plaintiff is informed he cannot
17 proceed on a § 1983 claim for damages if the claim implies the invalidity of his conviction or
18 sentence. Heck v. Humphrey, 512 U.S. 477, 487 (1994).

19 “Within the prison context, a viable claim of First Amendment retaliation entails five
20 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
21 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
22 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
23

24 ¹ California Penal Code § 1170(d)(1) permits a sentence to be recalled and a defendant to be
25 resentenced “at any time upon the recommendation of the secretary or the Board of Parole
26 Hearings in the case of state prison inmates.... The court may consider postconviction factors,
27 including, but not limited to, the inmate's disciplinary record and record of rehabilitation while
28 incarcerated, evidence that reflects whether age, time served, and diminished physical condition,
if any, have reduced the inmate's risk for future violence, and evidence that reflects that
circumstances have changed since the inmate's original sentencing so that the inmate's continued
incarceration is no longer in the interest of justice.”

1 correctional goal. Rhodes v. Robinson, 408 F.3d 559 567-68 (9th Cir. 2005) (citations omitted).
2 Filing an inmate grievance is a protected action under the First Amendment. Bruce v. Ylst, 351
3 F.3d 1283, 1288 (9th Cir. 2003). A prison transfer may also constitute an adverse action. See
4 Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2005) (recognizing an arbitrary confiscation and
5 destruction of property, initiation of a prison transfer, and assault as retaliation for filing inmate
6 grievances); Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (finding that a retaliatory prison
7 transfer and double-cell status can constitute a cause of action for retaliation under the First
8 Amendment).

9 Under the First Amendment, prisoners also have a right to send and receive mail.
10 Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, a prison may adopt
11 regulations or practices for inmate mail which limit a prisoner's First Amendment rights as long
12 as the regulations are "reasonably related to legitimate penological interests." Turner v. Safley,
13 482 U.S. 78, 89, (1987). "When a prison regulation affects outgoing mail as opposed to incoming
14 mail, there must be a 'closer fit between the regulation and the purpose it serves.'" Witherow, 52
15 F.3d at 265 (quoting Thornburgh v. Abbott, 490 U.S. 401, 412 (1989)). Courts have also
16 afforded greater protection to legal mail than non-legal mail. See Thornburgh, 490 U.S. at 413.
17 Isolated incidents of mail interference or tampering will not support a claim under section 1983
18 for violation of plaintiff's constitutional rights. See Davis v. Goord, 320 F.3d 346, 351 (2d. Cir.
19 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v. Maschner, 899 F.2d 940,
20 944 (10th Cir. 1990); see also Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999) (emphasizing
21 that a temporary delay or isolated incident of delay of mail does not violate a prisoner's First
22 Amendment rights). Generally, such isolated incidents must be accompanied by evidence of an
23 improper motive on the part of prison officials or result in interference with an inmate's right of
24 access to the courts or counsel in order to rise to the level of a constitutional violation. See Smith,
25 899 F.2d at 944.

26 A prison's interference with legal mail may also violate an inmate's right of access to the
27 courts which is protected by the First Amendment's right to petition the government and the due
28 process clause of the Fourteenth Amendment. See Snyder v. Nolen, 380 F.3d 279, 290-291 (7th

1 Cir. 2004) (discussing the development of cases concerning a prisoner's right of access to the
2 courts). Prison officials may not actively interfere with an inmate's right to litigate. Silva v.
3 Vittorio, 658 F.3d 1090, 1103 (9th Cir. 2011), overruled on other grounds by Richey v. Dahne,
4 807 F.3d 1202, 1209 n. 6 (9th Cir. 2015). In order to state a claim for the denial of access to the
5 courts, a plaintiff must allege he suffered an actual injury, which is prejudice with respect to
6 contemplated or existing litigation, such as the inability to meet a filing deadline or present a non-
7 frivolous claim. Lewis v. Casey, 518 U.S. 343, 349 (1996).

8 **IV. Analysis**

9 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
10 which relief can be granted under federal law. First and foremost, the remedy that plaintiff seeks
11 is not available via a § 1983 action. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).
12 Additionally, plaintiff does not link any of the named defendants to any alleged constitutional
13 violation seeking monetary relief. The retaliation and mail tampering allegations were committed
14 by the Gains family of correctional officers who are not named defendants in this action. For all
15 these reasons, plaintiff's complaint must be dismissed. The court will, however, grant leave to
16 file an amended complaint.

17 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
18 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
19 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
20 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
21 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
22 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
23 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
24 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

25 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
26 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
27 complaint be complete in itself without reference to any prior pleading. This is because, as a
28 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

4 **V. Plain Language Summary for Pro Se Party**

5 The following information is meant to explain this order in plain English and is not
6 intended as legal advice.

7 The court has reviewed the allegations in your complaint and determined that they do not
8 state any claim against the defendants. Your complaint is being dismissed, but you are being
9 given the chance to fix the problems identified in this screening order.

10 Although you are not required to do so, you may file an amended complaint within 30
11 days from the date of this order. If you choose to file an amended complaint, pay particular
12 attention to the legal standards identified in this order which may apply to your claims.

13 In accordance with the above, IT IS HEREBY ORDERED that:


14 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
16 shall be collected and paid in accordance with this court's order to the Director of the California
17 Department of Corrections and Rehabilitation filed concurrently herewith.

18 3. Plaintiff's complaint is dismissed.

19 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
20 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
21 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
22 number assigned this case and must be labeled "Amended Complaint." Failure to file an
23 amended complaint in accordance with this order will result in a recommendation that this action
24 be dismissed.

25 Dated: July 8, 2021

26 
27 CAROLYN K. DELANEY
28 UNITED STATES MAGISTRATE JUDGE